



OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE ARTESIA REDEVELOPMENT AGENCY AGENDA REPORT

MEETING DATE: 7/3/12 **CONTROL NO:**

ITEM NO: 2

SUBJECT: INSURANCE COVERAGE FOR OVERSIGHT BOARD AS ALTERNATIVE
TO SEPARATE LEGAL COUNSEL FOR OVERSIGHT BOARD

FROM: SUCCESSOR AGENCY

PRESENTATION BY: JUSTINE MENZEL, DEPUTY CITY MANAGER

RECOMMENDATION

It is recommended that the Oversight Board give policy direction as to whether the Oversight Board wants the Successor Agency to obtain insurance coverage for the Oversight Board through the California Joint Powers Insurance Authority (CJPIA).

BACKGROUND

On May 2, 2012, the Oversight Board indicated that it was willing to forego the retention of separate outside legal counsel if the Successor Agency could secure errors and omission insurance coverage for Oversight Board members. For this purpose, the Oversight Board amended the Successor Agency's Administrative Budget to include a line item for Oversight Board insurance and legal fees in the amount of \$5,000.00 for the January through June 2012 period, and another \$6,101.00 for the July through December 2012 period.

A. Information from the CJPIA

The Successor Agency staff has contacted the CJPIA and its insurance broker and has obtained an insurance quote for General Liability Coverage and for Public Official's Errors and Omissions Liability Coverage for the Oversight Board. The insurance quote and related documents are attached to this report. As indicated in that material, the annual cost to provide General Liability, Public Officials Errors and Omissions, and non owned and hired automobile liability insurance will be \$1,178.50 (for the period of September 29, 2012 to September 29, 2013 plus an additional \$250 plus taxes and fees for the period from July through September 2012.

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In reviewing this matter, the Successor Agency was informed by the CJPIA that its current Memorandum of Liability Coverage with the City of Artesia already covers the Successor Agency and city officials and appointed volunteers that represent the City on the Oversight Board. Specifically, in a newsletter announcement on this, the CJPIA indicated that:

"In summary: 1) The city has coverage as it acts as the Successor Agency, 2) city officials, employees, and appointed volunteers, have coverage (excess to any other coverage available) as they represent the city on the Oversight Board, 3) the Oversight Board does not have coverage under the Authority's Memorandum of Liability Coverage.

"Coverage for the Oversight Board is available through the SLIP program offered by Alliant Insurance Services (the Authority's broker for Property, Special Events, Crime, etc.). The contact person there is John Peterson, and he can be reached at jpeterson@alliantinsurance.com and 949-660-5907."

It is possible that other representatives of other entities on the Oversight Board have similar coverage for its members when serving on the Oversight Board such that each member is already covered by errors and omission insurance for their role on the Oversight Board. Each member may want to inquire with his or her appointing authority to determine if he or she is already protected under those policies in the same way that the City's representatives are covered.

If Insurance coverage is secured, it will provide separate and additional coverage for Oversight Board Members beyond what may already be provided through their appointing authority. It will also provide coverage for the Oversight Board itself as an entity.

B. Protections of Oversight Board Members under Law

AB x1 26, and its recently enacted clean-up bill (AB1484), both provide liability protections to Successor Agencies and Oversight Boards. Specifically, "designated local authority members" (officials of Successor Agencies) and Oversight Board members are protected by the immunities applicable to public entities and public officials governed by the Government Code Sections 810 et seq. and 840 et seq. (See Health & Safety Code Section 34173 (d)(3)(B) and 34179 (d)).

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Those provisions provide that public officials are not personally liability for acts and omissions within the scope and course of their official duties. Those provisions of law also require public agencies to provide a legal defense for their public officials in civil and criminal matters and pay judgments against public officials in civil cases unless the public entity finds that the act or omission of the official was not made in the course and scope of his or her official duties or the official acted or failed to act because of actual fraud, corruption or actual malice. (Government Code Section 825 and 995.2).

C. *Cost Implications to Successor Agency of Insurance Coverage and Independent Legal Services to the Oversight Board*

At the May 2, 2012 Oversight Board meeting, the Oversight Board directed that the Successor Agency's Administrative Budget be revised to include a line item for Oversight Board insurance and legal fees in the amount of \$5,000.00 for the January through June 2012 period, and another \$6,101.00 for the July through December 2012 period.

On June 1, 2012, the County Auditor Controller distributed funds to the Successor Agency for the 2nd ROPS period (July through December 2012). Due to the total amount of Property Tax Trust Funds available to pay all pass-through payments, other state obligations and then enforceable obligations, the County Auditor informed the Successor Agency, that there was not sufficient remaining funds to pay the Successor Agency its full \$250,000 Administrative Cost Allowance. Rather than getting the full amount requested or even one half of that full annual amount (\$125,000) in the June 2012 distribution for the July through December period, the Successor Agency only received \$103,000. It is not clear at this time whether there will be sufficient funds available for the January through June 2013 period to pay all of some of that remaining allowance or to make up the difference.

This means that even if the cost of insurance for the Oversight Board could be categorized as an enforceable obligation outside of the Administrative Cost Allowance, a position that is not at all clear in the law, such an action would still have the same effect on the total amount of funds available for the Administrative Cost Allowance. This is because enforceable obligations are to funded prior to the Administrative Cost Allowance and thus the cost would effectively reduce the total amount of funds remaining from which the available funds for the Administrative Cost Allowance is calculated.

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This also means that, at least for the first half of the 2012-2013 Fiscal Year, the Successor Agency has less than the dollar amount anticipated to pay various expenses including insurance for the Oversight Board and all of its other anticipated expenses. Retention of a separate outside legal counsel to provide legal advice to the Oversight Board will further eat into this already reduced Administrative Cost Allowance. It is uncertain how the Successor Agency can further adjust its budget to accommodate the additional expenses that may be requested by the Oversight Board given that the Successor Agency has not received the full amount of Administrative Cost Allowance that was anticipated with the Administrative Budget was prepared and adopted. The lack of sufficient funds from the County to pay for the Successor Agency's adopted Administrative Budget will mean that the Successor Agency will need to find additional cuts to the Budget to accommodate the insurance expense and any additional expense for outside legal expenses.

If the Oversight Board Members would like the Successor Agency to obtain insurance coverage for the Oversight Board and its members, the Successor Agency proposes to do so through the CJPIA. The cost of such coverage is well within the budgeted amount for that line item in the Successor Agency's approved Administrative Budget and thus paying for that insurance will not require pre-approval of a revision to that Budget. In addition, if the Oversight Board does not believe that such coverage is sufficient, the Oversight Board may direct the Successor Agency to come up with a plan to retain independent outside legal counsel to advise the Oversight Board. However, as indicated above, such a plan would also need to include a plan to make further cuts to the Administrative Budget to accommodate that additional expense.

D. Requested Action of the Oversight Board

The Successor Agency seeks policy direction on whether the Oversight Board would like the Successor Agency to secure errors and omission coverage from the CJPIA as proposed in this report.

Attachments

Special Liability Insurance Program (SLIP) Proposal for the Oversight Board's Insurance

**SPECIAL LIABILITY INSURANCE PROGRAM (SLIP)
PROPOSAL
TBD TO SEPTEMBER 29, 2012**

NAMED INSURED: Oversight Board of the Successor Agency to the Artesia Redevelopment Agency

PROGRAM TERM: TBD to 9/29/12

INSURANCE COMPANY: Associated Industries Insurance Company

A.M. BEST RATING:* A, Excellent; Financial Size Category IX; (\$250 Million to \$500 Million) as of 6/13/11

STANDARD & POOR RATING:* Not Rated

CALIFORNIA STATUS: Non-Admitted

POLICY NUMBER: TBD

COVERAGE: Manuscript Liability Form on an Occurrence Basis. Coverage included for:

(Coverage applies only where checked)

	LIMIT
Maximum Per Occurrence Limit for all Coverages Combined	\$1,000,000

		LIMIT	DED/SIR
X	Personal Injury (Including Bodily Injury and Property Damage)	\$1,000,000	\$1,000
	Broadcasters Liability		

	Owned Automobile Liability		
	Uninsured Motorist Coverage		
X	Non-Owned and Hired Automobile Liability	\$1,000,000	\$1,000

	Nonprofit Directors and Officers Liability		
X	Public Officials Errors and Omissions	\$1,000,000	\$1,000
	Educators Legal Liability		
	Employment Practices Liability		
	Nose Coverage	Retro Date:	

Annual Aggregate Limits		LIMIT
X	Products / Completed Operations	\$1,000,000
X	Public Officials Errors and Omissions	\$1,000,000
	Employment Practices Liability	
	Educators Legal Liability	

**See last page for additional information.*

SLIP Proposal

SUBLIMITS:

(Coverage applies only where checked)		LIMIT	DED/SIR
X	Fire Damage Liability (Sublimit of Personal Injury/property Damage Coverage Limit) Capped at \$1,000,000	\$1,000,000	\$1,000

- Limits are exhausted by Indemnity and Defense Cost.
- Limits are Per Occurrence.
- There is no General Aggregate.
- Limits apply to each entity in the program.

****This QUOTATION is subject to review and possible re-rating if there are any significant changes in operations, exposure or experience prior to AmTrust binding. Such significant changes include, but are not limited to, any declared or potential occurrence series, claims series or batch notices by or to the insured.****

**ANNUAL
PREMIUM:**

* Taxes, surplus lines fee and brokerage fees are included.

Premium:	\$1,000.00
Taxes:	\$30.00
Stamp Fee:	\$2.50
Broker Fee:	\$115.00
SHR Fee:	\$6.00
MGA Service Fee:	\$25.00
Total Cost:	\$1,178.50

IMPORTANT NOTICE: THE NONADMITTED & REINSURANCE REFORM ACT (NRRA) GOES INTO EFFECT ON JULY 21, 2011. ACCORDINGLY, SURPLUS LINES TAX RATES AND REGULATIONS ARE SUBJECT TO CHANGE WHICH COULD RESULT IN AN INCREASE OR DECREASE OF THE TOTAL SURPLUS LINES TAXES AND/OR FEES OWED ON THIS PLACEMENT. IF A CHANGE IS REQUIRED, WE WILL PROMPTLY NOTIFY YOU. ANY ADDITIONAL TAXES AND/OR FEES OWED MUST BE PROMPTLY REMITTED TO ALLIANT INSURANCE SERVICES, INC.

SHR Fee is 100% earned.

Mid-term cancellations could have a short-rate penalty applied to the return premium.

TRIA OPTION: 5% of premium plus applicable taxes and fees.

MINIMUM EARNED: 25% of the annual premium

SUBJECT TO AUDIT: NO

MAJOR EXCLUSIONS:

- Workers' Compensation
- Asbestos
- Auto Liability (unless Owned Auto coverage provided)
- Uninsured Motorist coverage except if Auto Liability marked X'd above, or unless coverage specifically requested and in file
- Failure to Supply
- Pollution Except for Hostile Fire and Vehicle Upset / Overturn coverage
- Inverse Condemnation / Eminent Domain
- Care, Custody, and Control
- Medical Payment Coverage
- Dam Liability
- All Aircraft; Watercraft over 51 feet in length
- Airports
- Medical Malpractice (except incidental)
- Subsidence
- Nuclear Material
- ERISA
- Fungi or Bacteria
- War or Terrorism
- Securities and Financial Interest
- Mold
- Directors & Officers Liability if Public Officials E&O applies
- Employment Practices Liability
- Montrose Exclusion – Prior knowledge of incident or loss
- Abuse & Molestation
- Residential Construction
- Athletic Participants
- Transit Operations
- Bodily Injury of Tenants or Guests of Tenants for Habitational Risks
- Insurance Agent/Claims Administration/Mortgage Broker
- Lead

CLAIMS REPORTING:

Please contact Alliant to report claims. Program and Deductible loss adjustment will be provided by Carl Warren Co.

PROPOSAL DATE:

6/28/12

PROPOSAL VALID UNTIL:

30 days from proposal date

SLIP Proposal

BROKER:

ALLIANT INSURANCE SERVICES, INC. • NEWPORT BEACH, CA

Gordon B. DesCombes, Executive Vice President

Rick Steddom, Vice President

Christine Tobin, Vice President

John Peterson, Account Manager Lead

Sheryl Fitzgerald, Account Manager lead

SUBJECT TO POLICY TERMS, CONDITIONS AND EXCLUSIONS



This proposal is for information purposes only and does not amend, extend or alter the policy in any way. Please refer to the policy form for completed coverage and exclusion information.

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliantinsurance.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

**Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.*

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

To learn more about companies doing business in California, visit the California Department of Insurance website at www.insurance.ca.gov.